

PLANNING COMMITTEE – 2nd April 2026**PART 1**

Report of the Head of Planning

PART 1

Any other reports to be considered in the public session

Item No – 1.1

PROPOSAL – Make an Article 4(1) Direction in relation to the permitted development right set out within Class L of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) insofar as it permits the change of use of a building from use falling within Use Class C3 (dwellinghouses) to a use falling within Use Class C4 (Houses in Multiple Occupation).

RECOMMENDATION – It is recommended that the Planning Committee determines whether an Article 4(1) direction is made in respect of the permitted development right set out within Class L of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) insofar as it permits the change of use of a building from use falling within Use Class C3 (dwellinghouses) to a use falling within Use Class C4 (Houses in Multiple Occupation).

If it is determined that an Article 4(1) direction should be made, the Planning Committee should consider a) whether the necessary provisions are taken for the Direction to be made on an immediate basis as opposed to a non-immediate basis and b) whether the Direction should be made on a Borough wide or more localised basis.

In the event that it is determined that an Article 4(1) direction should be made, delegated authority shall be given to the Head of Planning and/or Head of Legal to take all steps required to make the direction.

REASON FOR REFERRAL TO COMMITTEE – Section 2.4.4.2 of the Swale Borough Council Constitution states that the Planning Committee shall have responsibility for making decisions under the Town and Country Planning Act 1990 (as amended) and Planning (Listed Buildings and Conservation Areas) Act 1990, including (at xiii) to resolve to make an Article 4 Direction.

Case Officer – Ian Harrison

WARD

All

PARISH/TOWN COUNCIL

All

BACKGROUND PAPERS AND INFORMATION:

[Agenda item - Motion - Management and Regulation of HMO's in Swale](#)

Census Data - <https://www.ons.gov.uk/>
[Swale Borough Council Housing Market Assessment](#)

1. BACKGROUND TO PROPOSAL

1.1. At a full meeting of the Council on 1st October 2025, a motion was presented that was titled “*Management and Regulation of HMOs in Swale*”. A summary of the resolution is set out below. In this regard the Council noted:

- The allowances of permitted development rights and the implications for the ability to control HMOs.
- That HMOs are a valuable element of the housing supply, but that they can have significant impacts on local amenity, including increased parking demand, refuse generation, local infrastructure and public services impacts, housing balance effects and changes to the character of residential areas.
- That unregulated or concentrated growth of HMO’s in specific neighbourhoods may lead to a lack of available properties for families and single occupiers.
- That several local authorities across England have implemented Article 4(1) Directions to require planning consent for all new HMO’s, thereby allowing for better local oversight and policy application.
- Article 4(1) Directions can either be non-immediate or immediate.

1.2. This Council therefore resolved (at point 2.2 of the resolution) to refer the matter to the relevant Committee to develop a Supplementary Planning Document (SPD). At points 2.1 and 2.3, the Council resolved to:

2.1. *Commence the process of introducing a borough-wide Immediate Article 4 Direction under the Town and Country (General Permitted Development) (England) Order 2015 to remove the permitted development right allowing the conversion of a dwelling house (Use Class C3) into an HMO for up to six residents (Use Class C4), where the following types of property will be among those most likely to be classed as an HMO:*

- 2.1.1. *an entire house or flat which is let to three or more tenants who form two or more households and who share a kitchen, bathroom or toilet*
- 2.1.2. *a house or flat which has been converted entirely into bedsits or other non self-contained accommodation and which is let to three or more tenants who form two or more households and who share kitchen, bathroom or toilet facilities*
- 2.1.3. *a converted house which contains one or more flats which are not wholly self [1] contained (i.e. each flat does not contain within it a kitchen, bathroom and toilet) and which is occupied by three or more tenants who form two or more households*

2.1.4. a building which is converted entirely into self-contained flats if the conversion did not meet the standards of the 1991 Building Regulations and more than one-third of the flats are let on short-term tenancies

2.3. Consult with residents, ward councillors, parish councils, area committees, and other stakeholders to ensure the proposed Article 4 Direction and revised SPD are responsive to community concerns while supporting access to affordable housing.

1.3. Section 2.4.4.2 of the Swale Borough Council Constitution states that the Planning Committee shall have responsibility for making decisions under the Town and Country Planning Act 1990 (as amended) and Planning (Listed Buildings and Conservation Areas) Act 1990, including (at xiii) to resolve to make an Article 4 Direction. This report is, therefore, presented to the Planning Committee to address the resolution of the Motion that is set out above.

1.4. The proposal is that the Planning Committee determines whether an Article 4(1) direction is made in respect of the permitted development right set out within Class L of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) insofar as it permits the change of use of a building from a use falling within Use Class C3 (dwellinghouses) to a use falling within Use Class C4 (Houses in Multiple Occupation).

1.5. If it is determined that an Article 4(1) direction should be made, the Planning Committee should consider a) whether the necessary provisions are taken for the Direction to be made on an immediate basis as opposed to a non-immediate basis and b) whether the Direction should be made on a Borough wide or more localised basis.

1.6. In the event that it is determined that an Article 4(1) direction should be made, delegated authority shall be given to the Head of Planning and/or Head of Legal to make the direction.

2. LEGISLATION

2.1. Section 59 of The Town and Country Planning Act (1990) is primary legislation which allows the Secretary of State to make an order that provides for the granting of planning permission. This is built upon by, amongst others, Section 60 of the Act.

2.2. Article 3 of The Town and Country Planning (General Permitted Development) Order 2015 (The GPDO) is secondary legislation which sets out that, subject to certain defined provisions including that which is set out below, planning permission is granted for the classes of development described as permitted development in Schedule 2 of the GPDO.

2.3. One such 'permitted development,' set out at Class L of Part 3 of Schedule 2 of the GPDO is "*development consisting of the change of use of a building:*

- (a) *from a use falling within Class C4 (houses in multiple occupation) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule;*
- (b) *from a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, to a use falling within Class C4 (houses in multiple occupation) of that Schedule.”*

- 2.4. The Motion and the wider understanding of the issue raised is that it is only the development listed at (b) above that is intended to be controlled by the proposed Article 4(1) direction. It is taken that there is no reason to wish to control the change of use of HMOs falling within Use Class C4 to dwellinghouses falling within Use Class C3.
- 2.5. At Article 4(1) of the GPDO it is stated that if the local planning authority is satisfied that it is expedient that development described in any Part, Class or paragraph in Schedule 2 (other than a few exceptions that are not applicable here) should not be carried out unless permission is granted for it on an application, the local planning authority, may make a direction that the permission granted by article 3 does not apply to (a) all or any development of the Part, Class or paragraph in question in an area specified in the direction; or (b) any particular development, falling within that Part, Class or paragraph, which is specified in the direction. It goes on to state that the procedures which must be followed in making, modifying or cancelling any direction made under article 4(1) are set out in Schedule 3 of the GPDO. In summary, this allows for the restriction of permitted development rights, where it is considered expedient to do so, subject to the specified procedures being followed.
- 2.6. Schedule 3 of the GPDO address non-immediate and immediate Article 4(1) directions separately. The Full Council motion makes it clear that the preference is to serve an immediate Article 4(1) direction and as such only the provisions related to that approach are set out below. Officers would be able to provide further details of the non-immediate approach if requested.
- 2.7. Section 2 of Schedule 3 states that the “immediate effect” procedure can apply to developments included within Parts 3 of Schedule 2. It goes on to set out that the procedure can be used where *“the authority consider that the development to which the direction relates would be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area.”*
- 2.8. Various provisions within Schedule 3(2) apply including a requirement to notify the Secretary of State of the direction on the same day that notice is given under paragraph 1(1). The legislation makes provisions for the Secretary of State to then cancel or modify any Article 4(1) direction that is made.
- 2.9. Section 5 states that *“The direction comes into force in respect of any part of the land within the area to which it relates (a) on the date on which the notice is served in accordance with paragraph 1(1)(c) on the occupier of that part of the land or, if there is no occupier, on the owner; or (b) if paragraph 1(2) applies, on the date on which the notice is first published or displayed in accordance with paragraph 1(1).”*

- 2.10. Section 6 states that *“A direction to which this paragraph applies expires at the end of the period of 6 months beginning with the date on which it comes into force unless confirmed by the local planning authority in accordance with paragraphs 1(9) and (10) before the end of the 6-month period.”* As a result of this, if an immediate Article 4(1) direction is made, the matter will need to return to the Planning Committee in order for the Article 4(1) direction to be confirmed and remain in effect. Further provisions relating to that aspect of the procedure will be set out at the appropriate time. However, it is relevant to note that there are notification requirements at that stage, but no such requirements exist in relation to the making of the Article 4(1) direction.

Other Relevant Legislative Considerations

- 2.11. Section 108 of the Town and Country Planning Act 1990 states that where a planning permission granted by a development order is withdrawn or revoked, if an application is submitted within 12 months of the applicable revocation or withdrawal and planning permission for a development formerly permitted by that order is refused or is granted subject to conditions other than those imposed by that order, Section 107 of the Act shall apply. Section 107 of the Act allows for compensation to be paid where planning permission, which in this case is the planning permission granted by the permitted development right, has been revoked or modified.
- 2.12. However, Section 108 of the Act clarifies the above does not apply if 12 months passes between the making of an order and the withdrawal or revocation of the permitted development coming into effect. This is a difference between the immediate and non-immediate approaches.

Policy Consideration

- 2.13. It is considered relevant to note that paragraph 54 of the NPPF states that the use of Article 4 directions to remove national permitted development rights in scenarios such as those addressed by this report should be limited to situations where an Article 4 direction is necessary to protect local amenity or the well-being of the area, be based on robust evidence and apply to the smallest geographical area possible.
- 2.14. Similarly, the Planning Practice Guidance makes it clear at Paragraph 37 of the *when is planning permission required?* Section that an Article 4(1) direction can be used *“provided that there is justification for both its purpose and extent.”* The guidance goes on to state that:
- *“all article 4 directions should be applied in a measured and targeted way. They should be based on robust evidence, and apply to the smallest geographical area possible.”*
 - *“The potential harm that the article 4 direction is intended to address will need to be clearly identified, and there will need to be a particularly strong justification for the withdrawal of permitted development rights relating to a wide area (eg those covering.... the entire area of a local planning authority).”*
- 2.15. Regard has also been had to the 2008 DCLG document titled “Evidence Gathering – Housing in Multiple Occupation and possible planning responses” which pre-dated the

change to permitted development rights and the use classes order that introduced the arrangements that now exist.

3. CONSULTATION AND NOTIFICATION

3.1. No consultation or notification is required prior to the making of an Article 4(1) direction.

3.2. However, as set out above, upon making an Article 4(1) direction, the Council is required to:

- Notify the Secretary of State of the direction on the same day that notice is given by way of local advertisement.
- Give notice of the Article 4(1) direction by way of local advertisement.
- Give notice of the Article 4(1) direction by way of site notice at no fewer than 2 locations within the area to which the direction relates.
- Give notice of the Article 4(1) direction to Kent County Council.

3.3. In some instances, there is an additional requirement to serve notice of the Article 4(1) direction on every owner and occupier within the area. However, this requirement is waived where *“the number of owners or occupiers within the area to which the direction relates makes individual service impracticable.”* There are other options available to the Council to publicise the Article 4(1) direction as a matter of good practice which can occur, but it is not considered that it would be practicable to serve notice on every owner and occupier of land in the Borough and, therefore, the waiver is considered applicable.

3.4. It is noted that the Council Motion requires that the Council *“Consult with residents, ward councillors, parish councils, area committees, and other stakeholders to ensure the proposed Article 4 Direction and revised SPD are responsive to community concerns while supporting access to affordable housing.”* In this regard, it is considered that there is appropriate scope to undertake this consultation following the making of an Article 4(1) Direction and its subsequent confirmation (or otherwise) by the Council which would be required to occur within 6 months of the making of the Article 4(1) Direction.

3.5. If the non-immediate procedure was followed, comparable notification would be required.

4. ASSESSMENT

Existing and Increasing HMO Stock

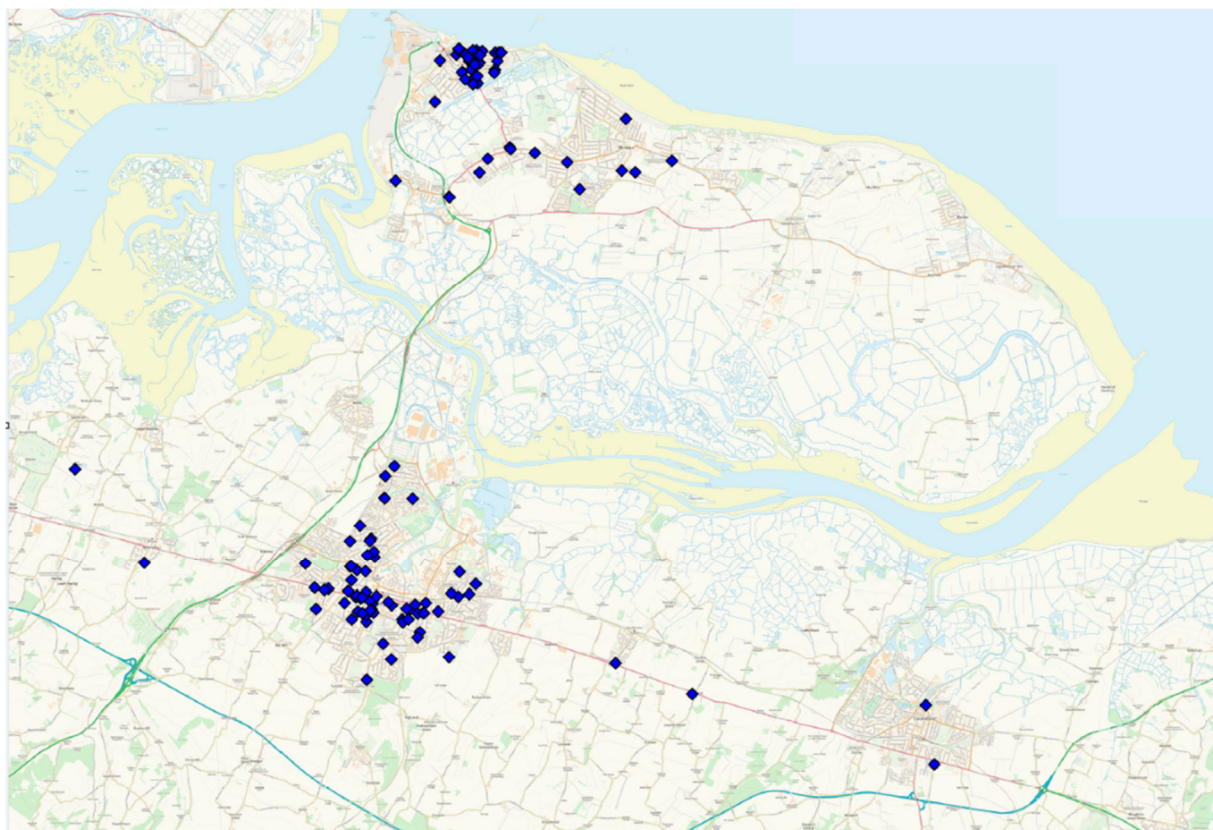
4.1. Identifying the existing HMO stock with reliance solely on planning records is problematic given that, as set out above, many can be formed without needing planning permission and without recourse to the Council's Planning Service. In short, many could have been created without the Planning Service knowing, especially where there are a lower number of residents that might not attract the same amount of attention as larger HMOs. Notwithstanding this, the Council's planning application, local plan monitoring and planning enforcement records have been reviewed and this

has enabled several HMOs to be identified. Other Council records have also been utilised to identify HMOs including the HMO License Register and Council Tax records.

- 4.2. Research undertaken as part of the preparation of the Draft HMO SPD in February 2026 indicates that at that time there were 126 HMOs known to be within the Swale Borough. On a ward level, the 126 HMOs that have been identified are broken down as follows:

Abbey	1	Milton Regis	8	Sheppey Central	5
Borden and Grove Park	6	Minster Cliffs	1	Teynham and Lysted	2
Chalkwell	12	Murston	4	Watling	1
Hartlip, Newington and Upchurch	2	Queenborough & Halfway	8	Woodstock	3
Homewood	15	Roman	16		
Kemsley	3	Sheerness	39	TOTAL	126

- 4.3. Evidence sourced from the Office for National Statistics (ONS) indicates that when the 2021 Census was undertaken, there were 61 Small HMOs and 14 Large HMOs in the Swale Borough. In total there were, therefore, 75 HMOs.
- 4.4. The existence of 126 HMOs at the recent point when an assessment was made would represent an increase of 51 HMOs in a period of less than 5 years, this amounts to a 68% increase. Excluding applications for the enlargement of an existing HMO, 8 planning applications for new HMOs appear to have been received in that time and so, it appears that most of those 51 HMOs would have been created without the need to obtain planning permission, through the use of permitted development rights. It is noted that some might have needed planning permission but been undertaken without such permission, which could be the subject of enforcement investigations and, as such, the number cited above should be taken as an approximate figure rather than definitive.
- 4.5. For reference, the location of known HMOs in the Borough is shown in the following: (Map on next page)



Effects of HMOs

- 4.6. The Motion for Full Council and the debate of that motion identified the following potential impacts of HMOs:
- Impacts on local amenity
 - Increased parking demand
 - Refuse generation
 - Impacts on local infrastructure and public services
 - Impacts on housing balance and changes to the character of residential areas
 - A reduction of the supply of properties for families and single occupiers
 - Poor living conditions for occupiers
- 4.7. The Motion acknowledged that there are benefits arising from the existence and provision of HMOs and these will also be explored below.
- 4.8. A feature of the conversion of dwellings (falling within Use Class C3) to HMOs is that they are no longer used as dwellings. In many instances, the properties that are attractive for conversion would currently have 2 to 5 bedrooms, with perhaps a living room or two and other such habitable space. This is the type of accommodation that might conventionally be expected to be occupied, in the majority of cases but not all, by families. A reconfiguration to a HMO would, therefore, reduce the housing stock of dwellings available to families.
- 4.9. The Council's Housing Market Assessment (HMA) identifies that the most needed accommodation within the Swale Borough is three bedroom housing. As a result,

developments that reduce the availability of that housing would work against the needs of the Borough.

- 4.10. In respect of owner-occupied housing, table 4.5 of the HMA identified that the greatest requirement was for 3 bedroom housing (20,776) and that this would increase to 25,030 dwellings by 2038. This was the greatest increased requirement identified (41%) of the differing house types. A 34.6 % increase was required in relation to two bedroom housing (from 9,120) and a 17.5% increase was identified to be required (from 11,416) for four bedroom dwellings. It is considered that this demonstrates that the highest requirement for owner-occupiers within the Borough is, and will continue to be, for three bedroom housing (both in terms of the overall number and the increasing requirement moving forward). For context, 715 additional one bedroom properties were identified to be required and 4,255 three bedroom houses were identified to be required.
- 4.11. In respect of private rented accommodation, table 4.6 of the HMA identified that the greatest requirement was for two and three bedroom accommodation (4,694 and 4,843 dwellings) in 2022 but the greatest increase of requirements was identified in respect of three bedroom accommodation (a 34.9% increase) and four bedroom housing (a 28.7% increase) by 2038. Again, for context, the increase required for three and four bedroom properties was 639 and 524 respectively, compared to 323 one bedroom properties and 343 two bedroom properties.
- 4.12. From this basis and as set out above, it is considered that the greatest requirement for housing, across non-affordable housing tenures, is for three bedroom housing. It is considered that housing of that size range is amongst the most likely to be converted to form small HMOs falling within Use Class C4.
- 4.13. In terms of broader demographics, there is a fairly even split of projected households within the Borough across one person households, couples with children and couples with no children (28.5%, 28% and 26.4%). By 2038, the household make-ups are forecast to be 29.5%, 27.6% and 24.9% within those categories, indicating no greater increases of any specific category of household. One person accommodation can take various forms, perhaps including accommodation within HMOs. Overall, this element of the evidence suggests that the household make-up is not materially greater for any one type than any other. As such, the demographic changes of the area do indicate that three and four bedroom properties will remain needed and that there is grounds to protect them from conversion to HMOs.
- 4.14. In terms of refuse storage, the Council's refuse collection arrangements operate in the same way for dwellings as they do for smaller HMOs falling within Use Class C4. There are no additional refuse storage provisions and, whilst it is noted that there is a perception that refuse storage facilities are not kept in the same way, it is not considered that this could be proven as there are just as likely to be persons in dwellings (Use Class C3) that do not store their waste in a neighbourly manner as there is in smaller HMOs.
- 4.15. Similarly, whilst there would be more adults at a site, it is not considered that the overall population of an area would increase as a result of the provision of small HMOs, which are limited to 6 residents, to an extent that there would be an undue impact on

infrastructure such as medical services. In this regard, it is noted that extra bedrooms would likely be created within a HMO but, even if a three bedroom dwelling was converted to a 6 person HMO, noting that the average occupation of a three bedroom dwellings is likely to be in the region of 4 persons, the net increase in population would be limited. Compared to occupation by a family with children of school age, there is almost certainly a reduction of demand for primary and secondary education services.

- 4.16. The minutes of The Motion highlight that a perception exists that there is a connection between HMOs and anti-social behaviour or crime. Utilising crime report statistics from the Kent Police website (covering a period from February 2025 to January 2026) it is noted that there is a loose correlation between the wards where the most HMOs are known to exist and the wards with the most crimes reported. This is not considered to demonstrate a statistically significant link between the two factors as it is noted that there will be many variables. Notwithstanding this, the evidence identified is presented below:

	Abbey	Bobbing, Iwade & Lower Halstow	Borden & Grove Park	Boughton and Courtenay	Chalkwell	East Downs
Crimes Reported	714	381	440	291	1271	116
Crime Report Rank	9	19	16	20	3	24
Existing HMOs	1	0	6	0	12	0
HMOs Rank	14	15	7	15	4	15
	Hartlip, Newington & Upchurch	Homewood	Kemsley	Milton Regis	Minster	Murston
Crimes Reported	428	684	438	825	509	795
Crime Report Rank	18	10	17	5	14	6
Existing HMOs	2	15	3	8	1	4
HMOs Rank	12	3	10	5	14	9
	Priory	Queenborough & Halfway	Roman	Sheerness	Sheppey Central	Sheppey East
Crimes Reported	482	951	785	2621	761	1402
Crime Report Rank	15	4	7	1	8	2
Existing HMOs	0	8	16	39	5	0
HMOs Rank	15	5	2	1	8	15
	St Ann's	Teynham and Lysted	The Meads	Watling	West Downs	Woodstock
Crimes Reported	574	548	277	596	226	241
Crime Report Rank	12	13	21	11	23	22
Existing HMOs	0	2	0	1	0	3
HMOs Rank	15	12	15	14	15	10

- 4.17. Anti-social behaviour records for January 2026 were available from the same source, showing no particular correlation between HMO numbers and reports of anti-social

behaviour, albeit Sheerness and Chalkwell wards again appear in the three wards with the highest number of reports of anti-social behaviour.

- 4.18. In terms of the adequacy of living conditions for occupiers of HMOs, it is noted that certain HMOs require a licence and elements of the living conditions of occupiers are addressed within that regime. However, there could be circumstances where neither planning permission nor a licence are required and, in that circumstance a development would have the ability to provide standards of a lower quality.
- 4.19. In terms of increases of parking demand, it is inevitable that there would be more adults occupying any particular building and, as such, there is a greater likelihood of persons being able to own a car.
- 4.20. Census data from the 2021 Census indicates that there were 11,119 private rented properties in the Swale Borough. HMOs align closest with this type of property.
- 4.21. Within that, 4,646 of the properties had just one usual resident aged 17 years or over. It is considered that this figure is relevant as most HMO rooms are occupied on a single adult basis and where there are more, this is likely to be balanced out with periods of under-occupancy elsewhere as not all properties are occupied at all times.
- 4.22. Within those properties, 1793 had no access to a car, 2571 had access to a car and 282 had access to two or more cars.
- 4.23. Using that data and proceeding on the basis that the two or more category would most likely be not more than two cars in the majority of cases, it can be assumed that the 4,646 persons renting privately in the Swale Borough led to car ownership amounting to approximately 3,135 cars. This amounts to a car ownership rate of 0.67 cars per person living alone.
- 4.24. More broadly, again based on the 2021 Census, of the 15,957 one-person households within the Swale Borough, 5,871 had no access to a car, 8866 had access to one car, 961 had access to two and 259 had access to 3. That equates to a total of 11,565 cars which amounts to an average of 0.72 cars per person living alone.
- 4.25. Expanding this data to a small HMO which could accommodate 6 persons, this could derive a parking demand of approximately 4 cars. Consequently, there would be an uplift relative to the amount of parking that would be required to be provided for a dwelling of comparable size having regard to the Council's adopted parking standards. Noting the spread of existing HMOs and their accumulation in areas of generally more close-knit housing, it is considered that most parking would occur on-street and within areas where parking availability is already limited, either through restrictions or existing stresses.
- 4.26. In terms of beneficial effects of HMO stock, it is noted that they provide accommodation for, mostly, single persons, who might not have the means to afford other private rented accommodation.
- 4.27. The increase in the number of HMOs is likely to correlate to a demand for HMOs which is understandable in light of the issues that exist around the cost of accommodation,

throughout society. HMOs are not likely to fall within the definition of “Affordable Housing” in the context of the recognised definitions. However, they are a cheaper form of accommodation and, in the context that the Council has declared an “Affordable Housing Emergency” it is considered that it is appropriate to note that there is a Council acknowledgement that insufficient affordable housing exists and, by extension of that, there is likely to be a demand for accommodation to meet the needs of those with a lower budget that is not able to be met by affordable or market housing.

Benefits of an Article 4(1) Direction

- 4.28. Fundamentally, the making of an Article 4(1) direction would align with the Motion of Full Council and represent the democratic function of the Council following its course.
- 4.29. A further benefit is that the Council would be able to have greater control over the creation of HMOs. By requiring planning permission for the future creation of any HMOs falling within Use Class C4, the existing control that exists for larger HMOs (with more than 6 residents) would be applied to HMOs with 6 or fewer residents. Benefits of this include:
- The ability to control the concentration of HMOs within specific areas.
 - The ability to ensure that adequate parking is available to serve the residents of HMOs to ensure compatibility with any existing on-street parking provision or avoid the unacceptable worsening of any existing situations where parking stress occurs.
 - The ability to ensure that smaller HMOs (which might not need a licence) feature the same minimum room sizes in respect of kitchen and bedrooms that currently only apply to HMOs that require a licence.
- 4.30. As with any restriction on development, it creates a greater likelihood that the status quo would exist either for a longer period or into the future. This could be perceived as a benefit where the existing character of an area, the living conditions of neighbouring residents and availability of parking is considered to be acceptable or preferable to any alternative situation that might include HMO provision.
- 4.31. A matter for consideration is whether any Article 4(1) direction is made on an immediate or non-immediate basis. A benefit of an immediate direction is, clearly, that it comes into effect immediately and avoids a year long ‘rush’ for persons to introduce smaller HMOs within the window where planning permission is not required to do so.
- 4.32. A benefit of a non-immediate direction is that there would be a reduced risk of compensation being sought within the first year after the making of the direction by any persons who consider that the provisions set out at Section 107 and 108 are applicable. The issue of potential compensation claims and liabilities is discussed in further detail at 2.11 and 2.12 above.

Risks of an Article 4(1) Direction

- 4.33. A risk could be that the making of an Article 4(1) direction could be subject to challenge. As highlighted at paragraph 2.12 above, the NPPF indicates that Article 4(1) directions should only be used where necessary to protect local amenity or the

well-being of the area, where they are based on robust evidence and subject to them being applied to the smallest geographical area possible.

- 4.34. Moreover, at paragraph 2.6 above, it is highlighted that the relevant test for the use of immediate directions should be where “*the authority consider that the development to which the direction relates would be prejudicial to the proper planning of their area or constitute a threat to the amenities of their area*”.
- 4.35. A decision to make an Article 4(1) direction could potentially be challenged if it is considered that the direction does not meet these tests. Similarly, if any procedural requirement is not met, there would be a risk of challenge.
- 4.36. A risk could arise from the ability of the Secretary of State to choose to modify or cancel any direction made by a Local Planning Authority. This would alter or remove the direction and cause any costs incurred as a result of making the direction (including the cost associated with the time of those involved) to have been abortive.
- 4.37. Conversely to the abovementioned benefit relating to the retention of an existing stock of dwellings falling within Use Class C3 and related to the commentary provided above about the beneficial effect of providing HMOs (i.e. that they meet the needs of those who might not be able to afford or wish to pay more expensive accommodation). A risk would be that serving a direction would reduce the potential to increase the provision of HMO accommodation, limiting the ability to meet a need and potentially increasing rental costs due to a limit on supply.
- 4.38. The above provided commentary in relation to the making of an immediate or non-immediate Article 4(1) direction is applicable in reverse in relation to the risks that would exist. In short, the risk of an immediate direction would be the liability of the Council to any compensation claims made under Sections 107 and 108 of the Act. However, a risk from the non-immediate approach would be that there would be a year long period where HMOs could be introduced under the terms of permitted development rights, possibly with the less desirable effects that have been assessed above being experienced.

5. OPTIONS

- 5.1. Drawing from the above, it is considered that the Planning Committee has several options comprising the following:
 - A. An Article 4(1) direction can be made that would have Immediate Effect or a “Non-Immediate” direction can be made that would come into effect in 12 months time.
 - B. An Article 4(1) direction can be made that would have effect throughout the Borough or specific parts of the Borough.
 - C. A combination approach could be taken where an Article 4(1) direction is made that has immediate effect for part of the Borough and a further Article 4(1) direction is made that does not immediately come into effect for the remainder of the Borough.

- D. The Planning Committee could choose to not make any Article 4(1) direction.
- E. The Planning Committee could defer the matter to enable any aspect to be explored further and/or addressed in more detail if it is considered that any of the tests set out above are not met.

6. RECOMMENDATION

- 6.1. It is recommended that the Planning Committee determines whether an Article 4(1) direction is made in respect of the permitted development right set out within Class L of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) insofar as it permits the change of use of a building from use falling within Use Class C3 (dwellinghouses) to a use falling within Use Class C4 (Houses in Multiple Occupation).
- 6.2. If it is determined that an Article 4(1) direction should be made, the Planning Committee should consider a) whether the necessary provisions are taken for the Direction to be made on an immediate basis as opposed to a non-immediate basis and b) whether the Direction should be made on a Borough wide or more localised basis.
- 6.3. In the event that it is determined that an Article 4(1) direction should be made, delegated authority shall be given to the Head of Planning and/or Head of Legal to take all steps required to make the direction.

7. IMPLICATIONS

Issue	Implications
Corporate Plan	The making of an Article 4(1) direction would have implications for the following Corporate Plan priorities: • Community • Economy • Environment • Health and housing • Running the Council
Financial, Resource and Property	There are financial and resource implications associated with preparing and making an Article 4(1) direction, undertaking public consultation in relation to it and as a result of due process. This is within the base budget. A financial risk could arise from persons making claims under Sections 107 and 108 of the Town and Country Planning Act 1990 as a result of any implications occurring within the first year following the 'planning permission' that is automatically granted by Development Order being revoked. No public examples of this have been identified and so the likelihood and cost risk is

	unknown. It could address any circumstance where a condition of planning permission causes an applicant to incur additional costs or any financial effects arising from the refusal of a planning application.
Legal, Statutory and Procurement	The preparation and making of an Article 4(1) direction would be carried out under a national legislative and regulatory framework. There would be resource requirements within the Council's legal service as a result of the formal making of the Direction.
Crime and Disorder	As set out in the body of this report, there is a perception of a link between the existence of HMOs and anti-social behaviour and crime. Although it is unlikely that a subsequent planning application could be refused on the grounds of potential events of crime or anti-social behaviour, a control could have an effect on these matters if the perception is accurate.
Environment and Climate/Ecological Emergency	There are no environment and climate/ecological emergency impacts arising from this decision.
Health and Wellbeing	There are no direct health and wellbeing impacts arising from this decision. However, an Article 4(1) direction could result in more control being had over HMO development which would give greater scope to control the provision of adequate living conditions for future occupiers and the environment and living conditions of existing residents.
Safeguarding of Children, Young People and Vulnerable Adults	None identified at this stage.
Risk Management and Health and Safety	As set out above, there is a potential financial risk from compensation claims made under Section 107 and 108 of the Town and Country Planning Act 1990. There is a risk of work being abortive if an Article 4(1) direction is challenged or altered/withdrawn by the Secretary of State.
Equality and Diversity	None at this stage.
Privacy and Data Protection	None at this stage.
Local Government Reorganisation	There could be an issue around controls in the existing Swale Borough not aligning with controls that exist in other parts of any future Authority.